THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.21768 of 2006

Date : 30-10-2006

Between:

K.Penchalaiah s/o.Krishna Murthy
and others .. Petitioners

and

The District Collector,
Nellore, Nellore District
and others .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

ORDER:

1. This Court ordered notice before admission on 23-10-2006 and granted interim stay for a period of two weeks.

2. Sri Upender Reddy filed counter affidavit on behalf of 3rd respondent and pleaded urgency in the matter on 27-10-2006 and thus the matter is coming up for admission today. A reply affidavit is filed on behalf of the writ petitioners. The proceedings of 1st respondent in ROC.No.705/2006 dt.21-3-2006 and the proceeding of 2nd respondent in L.Dis.No.1825/2006/A3 dt.30-8-2006 are also placed before this Court.

3. The Writ Petition is filed for a writ of mandamus or any other appropriate writ or direction calling for records relating to resolution passed by the 3rd respondent-Gram Panchayat accepting renewal of the lease of the petitioners and the notification dated 7-10-2006 and to declare the action of the 3rd respondent-Gram Panchayat to auction the petitioners shops and the auction notification dated 7-10-2006 as illegal and arbitrary and consequently to direct the respondents to renew the lease of the petitioners by implementing the resolution passed by the previous Gram Panchayat of Naidupeta and to pass such other suitable orders.

4. Sri Gangarami Reddy, learned Counsel representing the writ petitioners had taken this Court through the averments made in the affidavit filed in support of the Writ Petition, the stand taken in the counter affidavit of the 3rd respondent and also the averments made in the reply affidavit. The learned Counsel would contend that though the petitioners are similarly placed with certain other lessees in commercial complexes, having renewed such leases for further period, the writ petitioners are being discriminated by way of the 3rd respondent adopting the procedure

of proceeding with public auction. The learned Counsel also would submit that even otherwise proposals were sent by the Gram Panchayat in the month of January 2006 to the 1st respondent/District Collector and it would be appropriate if the 1st respondent takes a decision in this regard. The Counsel also would submit that even if the concerned Gram Panchayat proceeds with public auction, the respective shops may not fetch better or more income and in view of the same it would be just and equitable to consider the cases of the respective writ petitioners for renewal of the respective shops.

5. The learned Government Pleader for Panchayat Raj had taken a stand that the 1st respondent/District Collector, Nellore had taken a decision in accordance with the policy and communicated to the respective Gram Panchayats to go for public auction in such cases.

6. Sri Upender Reddy, the learned Standing Counsel representing the 3rd respondent-Gram Panchayat had taken this Court through the contents of the counter affidavit and also would submit that it may be true that prior to the communication issued by the 1st respondent/District Collector, Nellore, some renewals were made, but the fact remains that such renewals are not made after the instructions issued by the 1st respondent/District Collector, Nellore, in this regard. The learned Counsel placed before this Court the proceedings in ROC.No.705/2006, dated 21-3-2006 and would maintain that in the light of these instructions and directions issued by the 1st respondent, no such renewals were made thereafter and hence the 3rd respondent-Gram Panchayat is bound to follow and implement the directions issued by the 1st respondent. The learned Counsel also would submit that even otherwise, normally for the purpose of protecting the exchequer of the Gram Panchayats, public auction being the general rule and private

negotiations for renewal after the expiry of the lease being always exception, this is not a fit matter to be interfered with at this stage when the concerned Gram Panchayat is proceeding for the public auction of the shops in question.

7. Heard the Counsel on record.

8. It is stated in the affidavit filed in support of the Writ Petition that the 3rd respondent-Gram Panchayat has as many as eight commercial complexes within the Naidupet Gram Panchayat. The Gram Panchayat had granted lease of the said shops in the said commercial complexes on monthly rental basis. It is also stated that petitioners are allottees of the shops situate at N.J.R. commercial complex and the 3rd respondent had granted the lease initially for a period of three years and the petitioners had been paying the rents regularly to the 3rd respondent-Gram Panchayat. It is also further stated that in the month of March 2006, the 3rd respondent-Gram Panchayat had called for options from the petitioners and the tenants of other complexes to continue in their respective premises on the enhanced rents. The petitioners agreed for enhancement of rent on the existing rent and to continue in their respective shops. The 3rd respondent-Gram Panchayat had passed a resolution accepting the renewal of the lease for another three years on enhancement commencing from 1-4-2006 to 31-3-2009 and the petitioners executed the renewal lease deeds agreeing for the terms and conditions of the 3rd respondent-Gram Panchayat. The 3rd respondent-Gram Panchayat had sent proposals to the respondents 1 and 2 and the petitioners have been carrying on their business in their respective shops. It is further stated that the newly elected Members of the Gram Panchayat assumed the office in the month of August 2006 and the newly elected Panchayat Board without implementing the resolution passed by the previous Gram Panchayat had issued the notification

dated 7-10-2006 to auction the shops situate at N.J.R. complex, Naidupeta and for allotment of the shops to the successful bidders. It is also further stated that the previous Gram Panchayat had passed a resolution to continue the leases for another three years commencing from 1-4-2006 to 31-3-2009 by enhancing the rental on the existing rent. The petitioners also agreed for the same and executed renewal lease deeds. It is also specifically stated that in respect of Chadalawada Krishna Murthy complex, Chadalawada Venkata Subbamma Vegetable Market, Chadalawada Venkata Subbamma Fish and Mutton Market which are owned by the 3rd respondent-Gram Panchayat even though the lease period expired in the month of March 2006 the 3rd respondent had not notified them and on the other hand the 3rd respondent continued the existing tenants on enhancing the rent. Further it is stated that in respect of Indiramma commercial complex there are 14 shops and only 3 shops had been notified and the other shops had been given to the existing tenants on enhanced rent. Thus the action of the respondents in notifying the shops of the petitioners would be in violation of Article 14 of the Constitution of India.

9. In the counter affidavit filed by the 3rd respondent it is stated that the 3rd respondent has eight commercial complexes and they had leased out the same to different persons by way of public auction. It is also stated that after the expiry date, the Gram Panchayat had passed a resolution directing the petitioners to pay 10% more for extending the lease for three more years. Thus the Gram Panchayat in question, 3rd respondent, forwarded the resolution to the 1st respondent through the 2nd respondent, but the 1st respondent/District Collector had rejected the proposals and directed to conduct public auction to the shops in N.J.R. commercial complex by proceedings in ROC.No.705/2006, dated 31-3-

2006 and the 3rd respondent received the same on 27-4-2006. Thus the 2nd respondent directed the 3rd respondent not to entertain any proposals for extension of leases by his proceedings in letter L.Dis.1825/2006/A3 dated 30-8-2006 and accordingly the 3rd respondent-Gram Panchayat had passed another resolution to conduct fresh public auction as the 1st and the 2nd respondents had rejected the earlier proposals. Specific stand is taken that the 3rd respondent-Gram Panchayat has no intention to pass another resolution as alleged and the Gram Panchayat has to act on the directions of the respondents 1 and 2 from time to time. It is further stated that the Gram Panchayat had prepared the auction notice and gave wide publicity through news papers to conduct the auction on 24-10-2006. It is the specific stand of the 3rd respondent Gram Panchayat that earlier the leases had been extended to some shop owners only with the permission of the respondents 1 and 2. Further a specific stand is taken that if the petitioners are having any grievance they can file an Appeal before the Government. It is also stated that the 3rd respondent had enhanced the rent by 10% in respect of Chadalawada Krishna Murthy complex with the approval of the respondents 1 and 2 and conducted fresh public auctions to Chadalawada Venkata Subbamma Vegetable market, fish and mutton markets in the year 2004 for a period of three years. It is further stated that in respect of Indiramma commercial complex the public auction had been conducted in the year 2005 for a period of three years. Further specific stand is taken that as per the notification the 3rd respondent had received many applications by paying Rs.20,000/- as E.M.D. and they had issued receipts also to the participants and in view of the interim stay granted by this Court on 23-10-2006 the auction scheduled to be held on 24-10-2006 was stalled. Further specific stand is taken that the 3rd respondent is bound to honour

and obey the directions issued by the respondents 1 and 2 and hence the 3rd respondent is left with no other option except to proceed with the public auction.

10. A reply affidavit is filed wherein the stand taken in the original affidavit filed in support of the Writ Petition had been reiterated and a further stand was taken that the 3rd respondent Gram Panchayat had sent proposals in the month of June 2006 stating that it is not feasible to auction the shops since the rent now being paid may not be fetched and the said proposal sent by the 3rd respondent-Gram Panchayat is still pending with the 1st respondent and no decision had been taken on such proposal. Further certain other factual details also had been narrated in paras 4 and 5 of the reply affidavit and the stand of discrimination had been reiterated.

11. In the light of the respective stands taken by the parties and also the proceedings referred to in the counter affidavit specified supra, the question to be decided now is whether the 3rd respondent-Gram Panchayat in the facts and circumstances is justified in proceeding with the public auction. Normally, the general rule in the interest of exchequer of the Gram Panchayat would be to proceed with public auction and always the renewal or leasing out through private negotiations to be an exception. It is no doubt true that prior to March 2006 it appears certain renewals were made on some enhanced rent. Specific stand is taken that subsequent to the general instructions issued by the 1st respondent to the Gram Panchayats in Nellore District, in the light of the policy, no such renewals are being entertained by any of the Gram Panchayats. The relevant proceedings of the respondents 1 and 2 also are placed before this Court. Further specific stand is taken that the 3rd respondent is bound to honour and obey the directions issued by the respondents 1 and 2 and in the event of the petitioners being aggrieved of the same,

they are at liberty to approach the Government for redressal their grievance, if any, in this regard.

12. In the light of the stand taken by the 3rd respondent, it is needless to say that the writ petitioners are at liberty to approach the Government for redressal of their grievance, if any. In the light of the facts and circumstances, this Court does not see any ground to interfere with the public auction by the 3rd respondent-Gram Panchayat. In the light of the same, subject to the above observation made by this Court, the Writ Petition shall stand dismissed. No costs.

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Justice P.S.Narayana

Date : 30-10-2006

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